

## ***Statement***

### ***Insurance Association of Connecticut***

Judiciary Committee

March 26, 2009

#### **HB 6532, An Act Concerning The Statute Of Limitations For Bringing An Action For Damages For The Sexual Assault Of A Minor**

The Insurance Association of Connecticut is opposed to HB 6532, An Act Concerning The Statute Of Limitations For Bringing An Action For Damages For The Sexual Assault Of A Minor, which seeks to retroactively extend the statute of limitations in sexual assault claims of a minor if new evidence is discovered after the statute has already tolled.

Tolling the statute of limitations pursuant to the provisions of HB 6532 once new evidence is discovered is completely unnecessary. Connecticut case law has already established that our current statutory scheme is to be interpreted to toll the statute of limitations until the claimant “knows or reasonably should know” the identity of the tortfeasor. Tarnowsky v. Socci, 271 Conn. 284 (2004). There are already provisions in current law and case law tolling the statute when a cause of action is fraudulently concealed. Reinstating a claim after a statute has tolled simply because new evidence is discovered could result in a claim that is never extinguished.

Tolling the statute so that the plaintiff may gather evidence is contrary to the purpose of a statute of limitation. Statute of limitations is designed to protect individuals from limitless litigation by providing a finite time in which a person

can assert their rights. The statute of limitations to bring a claim is already thirty years. There are court procedures currently available to plaintiffs if they need the court to intervene to gain assistance to develop the essential facts of their claim. Reinstating a cause of action makes it more likely that evidence will no longer exist and parties and witnesses no longer available.

Additionally, HB 6532 specifically seeks to apply retroactively, which shall provide rights to individuals that do not currently exist and could result in a multitude of stale or closed actions to be reopened. As such, the retroactive nature of HB 6532 makes radical and potentially unconstitutional changes to the Connecticut Statutes of Limitations laws. Court decisions in the vast majority of states that have looked at this issue strongly indicate that reviving causes of action that have already expired under the statute of limitations violates the concept of due process. Many courts throughout the country have ruled that lapsed statutes of limitations create vested due process rights in defendants. *See., e.g. Wiley v. Roof*, 641 So.2d 66, 68 (Fla. 1994) (holding that “retroactively applying a new statute of limitations robs both plaintiffs and defendants the reliability and predictability of the law.”); *Kelly v. Marcantonio*, 678 A.2d 873, 882-83 (R.I. 1996) (ruling that reviving time-barred childhood sexual abuse claims would “impinge upon a defendant’s vested and substantive rights and would offend a defendant’s art. 1, sec. 2, due process protections.”) Due to the constitutional concern, states have flatly rejected retroactivity with respect to changes in the statutes of limitations on civil claims.

Finally, altering the timeframe for bringing such a cause of action and permitting it to extend to already accrued causes of action is not in the public

interest. Reviving time-barred actions for liability for sexual acts towards minors will create an unsound precedent with adverse consequences for other types of actions. Childhood sexual assault victims are, quite understandably, highly sympathetic. But there are many situations where the operation of the statute of limitations may be perceived as unfair to particular individuals or individual groups. For example, a person who has been rendered a paraplegic, or suffered severe burns over most of his body, or an adult victim of sexual assault will find their claims time-barred if they file a complaint just one day after the applicable limitations period expires. The unsettling facts of a particular situation should not trump the critical importance of the predictability and certainty that statutes of limitations serve.

Due to these public policy and constitutional concerns, other states have overwhelmingly rejected extreme proposals, like HB 6532, to retroactively expand the statutes of limitations for child sexual abuse lawsuits. For those reasons, the IAC urges your rejection of HB 6532.